construction of language say that the provisions in our Constitution and laws that grand juries shall be composed of twelve men mean less than the plain words import. To hold that it also means that a grand jury may be composed partly of men and partly of women would necessarily imply that with the same logic, or want of logic, we could also hold that it might be composed of twelve women. We are not dealing, and cannot deal, with the expediency of the law, but must declare only what it is. The right or duty (whichever it may be deemed to serve on grand juries) cannot be confounded with the right to vote, and until in the wisdom of our people a change is made in the provision of the Constitution it is our duty to uphold it as written.

"In 1875 there was considered by the Supreme Court of the United States (Minor *v.* Happersett, 21 Wall. 162, 22 L. Ed. 627) the question whether the right of citizenship of women also conferred the right of suffrage. After a lengthy discussion, the court held that one did not necessarily involve the other, and the concluding words of Chief Justice Waite, as to withholding from women then the right to vote, is not inappropriate here incident to her nonservice on juries:

'We have given this case the careful consideration its importance demands. If the law is wrong, it ought to be changed; but the power for that is not with us. The arguments addressed to us bearing upon such a view of the subject may perhaps be sufficient to induce those having the power to make the alteration, but they ought not to be permitted to influence our judgment in determining the present rights of the parties now litigating before us. No argument as to woman's need of suffrage can be considered. We can only act upon her rights as they exist. It is not for us to look at the hardship of withholding. Our duty is at an end if we find it is within the power of a state to withhold.' "

Virginia State Tax Held to Discriminate between National Bank Stock and Capital Invested in Competition Therewith.—In Merchants' Nat'l Bank of Richmond *v.* City of Richmond, 41 Sup. Ct. Rep. 619, the Supreme Court of the United States, reversing a decision of the Supreme Court of Appeals of Virginia, held that, a tax imposed pursuant to Acts Va. 1915, c. 85, and a city ordinance enacted under the authority thereof, which, in connection with the tax under Acts Va. 1915, c. 117, amounted to $1.75 on each $100 invested in bank stock, whether national or state, while the rate was only 95 cents on each $100 valuation of intangible property, including bonds, notes, and other evidences of indebtedness, is contrary to U. S. Rev. St., sec. 5219 (Comp. St., sec. 9784), providing that the state tax on national bank shares shall not exceed the tax levied on moneyed capital in hands of individual citizens, where it was clearly shown that the capital taxed at lower rate was in relatively material competition with the banks of the state.

Mr. Justice Pitney who delivered the opinion of the court said in part:

"The Supreme Court of Appeals entertained the view that the purpose of section 5219, Rev. Stat., was confined to the prevention of discrimination by the states in favor of state banking associations as against national banking associations, and that since none such is shown here there was no repugnance to the federal statute. This, however, is too narrow a view of section 5219. It traces its origin to section 41 of the Act of June 3, 1864, c. 106, 13 Stat. 99, 111, 112, in which, besides the restriction that state taxation of the shares of national banking associations should not be at a greater rate than that assessed upon other moneyed capital in the hands of individual citizens of such state, there was an expres proviso that the tax should not exceed the rate imposed upon the shares of state banks. But this was modified by Act of February 10, 1868, c. 7, 15 Stat. 34 (Comp. St., sec. 9784), in a manner which, as was pointed out in Boyer *v.* Boyer, 113 U. S. 689, 691, 692, 5 Sup. Ct. 706, 28 L. Ed. 1089, precluded the possibility of an interpretation permitting the states, while imposing the same taxation upon national bank shares as upon shares in state banks, to discriminate against national bank shares in favor of moneyed capital not invested in state bank stock. 'At any rate,' said the court, 'the Acts of Congress do not now permit any such discrimination.' In the amended form the provision was carried into the Revised Statutes as section 5219, which prescribes that state taxation of shares in the national banks 'shall not be at a greater rate than is assessed upon other moneyed capital in the hands of individual citizens of such state.'

"By repeated decisions of this court, dealing with the restriction here imposed, it has become established that while the words 'moneyed capital in the hands of individual citizens' do not include shares of stock in corporations that do not enter into competition with the national banks, they do include something besides shares in banking corporations and others that enter into direct competition with those banks. They include not only moneys invested in private banking, properly so called, but investments of individuals in securities that represent money at interest and other evidences of indebtedness such as normally enter into the business of banking. In Evansville Bank *v.* Britton, 105 U. S. 322, 324, 26 L. Ed. 1053, the court said:

'The act of Congress does not make the tax on personal property the measure of the tax on bank shares in the state, but the tax on moneyed capital in the hands of the individual citizens. Credits, money loaned at interest, and demands against persons or corporations are more purely representative of moneyed capital than personal property, so far as they can be said to differ. Undoubtedly there may be much personal property exempt from taxation without giving bank shares a right to similar exemption, because personal property is not necessarily

moneyed capital. But the rights, credits, demands, and money at interest mentioned in the Indiana statute, from which bona fide debts may be deducted, all mean moneyed capital invested in that way. * * * We are of opinion that the taxation of bank shares by the Indiana statute, without permitting the shareholder to deduct from their assessed value the amount of his bona fide indebtedness, as in the case of other investments of moneyed capital, is a discrimination forbidden by the act of Congress.'

"And in Mercantile Bank *v.* New York, 121 U. S. 138, 7 Sup. Ct. 826, 30 L. Ed. 895, the court speaking by Mr. Justice Matthews, after reviewing previous decisions and pointing out (121 U. S. 154, 7 Sup. Ct. 826, 30 L. Ed. 895) the policy and purpose of the act as the key to its proper interpretation, proceeded to declare (121 U. S. 157, 7 Sup. Ct. 836, 30 L. Ed. 895):

'The terms of the act of Congress, therefore, include shares of stock or other interests owned by individuals in all enterprises in which the capital employed in carrying on its business is money, where the object of the business is the making of profit by its use as money. The moneyed capital thus employed is invested for that purpose in securities by way of loan, discount, or otherwise, which are from time to time, according to the rules of the business, reduced again to money and reinvested. It includes money in the hands of individuals employed in a similar way, invested in loans, or in securities for the payment of money, either as an investment of a permanent character, or temporarily with a view to sale or repayment and reinvestment. In this way the moneyed capital in the hands of individuals is distinguished from what is known generally as personal property.'

"Proceeding then to quote the passage we have cited from Evansville Bank *v.* Britton, supra.

"In Amoskeag Savings Bank *v.* Purdy, 231 U. S. 373, 390, 391, 34 Sup. Ct. 114, 58 L. Ed. 274, the above-mentioned declaration of the court in Mercantile Bank *v.* New York, 121 U. S. 138, 157, 7 Sup. Ct. 826, 30 L. Ed. 895, including the citation from Evansville Bank *v.* Britton, was repeated, and it was pointed out that the rule of construction thus laid down had since been consistently adhered to. No decision of this court to which our attention is called has qualified that rule, or construed sec. 5219 as leaving out of consideration the rate of state taxation imposed upon moneyed capital in the hands of individual citizens invested in loans or securities for the payment of money, either for permanent or temporary purposes, where such moneyed capital comes into competition with that of the national banks. Thus, in Bank of Commerce *v.* Seattle, 166 U. S. 463, 464, 17 Sup. Ct. 996, 41 L. Ed. 1079, the precise ground of decision was the want of a showing that 'the moneyed capital left unassessed was, as to any material portion thereof, moneyed capital coming into competition with that of national banks.' To the same effect First National

Bank of Wellington *v.* Chapman, 173 U. S. 205, 219, 19 Sup. Ct. 407, 43 L. Ed. 669. In the present case, there is a clear showing of such competition, relatively material in amount, and it follows that, upon the undisputed facts, the ordinance and statute under which the stock of plaintiff in error was assessed, as construed and applied, exceeded the limitation prescribed by sec. 5219, Rev. Stat., and hence that the tax is invalid."

Mr. Justice Brandeis, dissents.

When Martial Law Obtains.—In Ex parte Lavinder, 108 S. E. 428, the Supreme Court of Appeals of West Virginia held that martial law operating, in the government of territory, as a substitute for the civil law, or as an addition thereto, so as to restrict the liberties of citizens and augment the powers of officers, is an incident of military operations and of actual military occupation of the territory so governed; wherefore it cannot obtain in the absence of such operations and occupation.

The court said in part:

"The substitution of military for the civil law in any community is an extreme measure. Socially, economically, and politically, it is deplorable and calamitous. Its sole justification is the failure of the civil law fully to operate and function, for the time being, by reason of the paralysis or overthrow of its agencies, in consequence of an insurrection, invasion, or other enterprise hostile to the state, and resulting in actual warfare. And then such substitution at any place within the state cannot extend beyond the limits of the theater of actual war. Nance *v.* Brown, 71 W. Va. 519, 77 S. E. 243, 45 L. R. A. (N. S.) 996, Ann. Cas. 1914C, 1; In re Jones et al., 71 W. Va. 567, 77 S. E. 1029, 45 L. R. A. (N. S.) 1030, Ann. Cas. 1914C, 31. Martial Law within the territory of a country at war with another, or with rebellious citizens or subjects in possession of a part of its own territory, is not a necessary incident or consequence of the existing state of war. A concrete illustration of this proposition is found in the late World War. Though there were millions of men under arms in the United States, not a foot of its territory was subjected to marital law on the ground of the existence of the state of war between this country and certain European governments; nor, under principles declared in Ex parte Milligan, 4 Wall. (U. S.) 2, 18 L. Ed. 281, could it have been, because there was no actual warfare in this country—no fighting, no battle lines, no area in which troops were assembled or removed to and fro, in the conduct of or preparation for immediate or probable combat. In the great Civil War, portions of this country lying without the theater of actual war, as here indicated, were constitutionally immune from martial law. Ex parte Milligan, cited.

"It is perfectly manifest that the proclamation of war did not, ipso facto, nor ex proprio vigore, inaugurate martial law in Mingo county.